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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

LARRY D. HEWITT,

Defendant and Appellant.

B243556

(Los Angeles County
Super. Ct. No. MA055030)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Bernie C. Laforteza, Judge. Affirmed.

James Koester, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

Defendant Larry D. Hewitt pled no contest to carrying a dirk or dagger that was concealed upon his person and to having a prior serious felony conviction within the meaning of the “Three Strikes” law. (Pen. Code, §§ 21310, 667, subds. (b)-(i), 1170.12, subds. (a)-(d).) He filed a notice of appeal challenging the denial of his suppression motion (Pen. Code, § 1538.5) and his sentence. We affirm.

FACTUAL AND PROCEDURAL HISTORY

By information dated February 3, 2012, defendant was charged with one count of carrying a dirk or dagger that was concealed upon his person. It was further alleged that he had suffered one prior conviction within the meaning of the Three Strikes law and had served four prior prison terms. (Pen. Code, § 667.5, subd. (b).) Defendant represented himself in the trial court.

On May 4, 2012, defendant’s suppression motion was heard. Los Angeles County Sheriff’s Deputy Jeremiah Fletcher testified that on January 4, 2012, at approximately 5:30 p.m., he responded to a location in Lancaster after receiving a call regarding a man with a knife. When the deputy arrived, he saw a bus at a designated stop and people standing nearby. The bus driver and others were pointing at the bus and saying a man with a knife was inside. Deputy Fletcher entered the bus and detained defendant, who was identified by the bus driver as the man with the knife. The deputy escorted defendant off of the bus and asked him if he had any weapons on him. After defendant responded that he had a knife, Deputy Fletcher conducted a patdown search and recovered a Swiss army knife with the open blade locked in defendant’s right front pants pocket.

Maria Lopez was called by defendant. She testified that on January 4, she was told by a man that she needed to call 911. She stated she received one such call.

Defendant’s suppression motion was denied.

On August 22, 2012, defendant pled no contest to the weapon charge and to the allegation that he had suffered a prior serious felony conviction within the meaning of the Three Strikes law. Probation in another case was terminated.

DISCUSSION

Defendant's court-appointed appellate counsel filed a brief raising no issues and asking this court to independently review the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436. We advised defendant that he had 30 days within which to raise any contentions that he wished for us to consider. On April 10, 2013, he filed a supplemental brief, which we discuss below.

With respect to the patdown search, a police officer may temporarily detain and conduct a patdown of an individual if the officer can point to specific and articulable facts that give rise to a reasonable suspicion that criminal activity is afoot and the individual connected with it is presently armed. (*Terry v. Ohio* (1968) 392 U.S. 1, 30.) Here, there is no question that the information Deputy Fletcher received from numerous, identifiable citizens that defendant had a knife on the bus provided reasonable suspicion that defendant was tied to criminal activity and was presently armed. (See *People v. Coulombe* (2000) 86 Cal.App.4th 52, 58-60 [receipt by police of two independent citizen tips that the defendant was armed with firearm justified patdown search].) In addition, defendant's admission that he had a knife on his person justified the deputy's search for his safety, as well as that of the people around the bus. The trial court properly denied defendant's suppression motion.

In his supplemental brief, defendant alleges the record is incomplete. He asserts that the trial court (a judge other than the one who accepted his plea) struck his prior strike during an August 20, 2012 hearing at which defendant was not present. In addition, defendant contends the strike prior had been declared constitutionally invalid in a prior proceeding.

With respect to defendant's claim that his prior strike was stricken in this proceeding, we have the August 20, 2012 minute order from the court defendant identifies as the one where the hearing occurred. There is no reference in the minute order to a hearing to dismiss the prior conviction or a ruling by the court striking it. Defendant does not explain how he came to admit a prior conviction that had been stricken at an earlier hearing.

Turning to defendant's claim that the alleged prior had been declared unconstitutional, we observe that defendant, who was in *propria persona*, filed a motion claiming that the alleged prior (a violation of Pen. Code, § 191.5) had been dismissed as part of an earlier plea bargain. The information was amended to change the prior to a conviction under Penal Code section 192, subdivision (c)(3) and defendant pled no contest to that allegation. Defendant also asked the trial court to dismiss the prior strike pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497. However, he did not challenge the prior on the ground that it was constitutionally invalid. Having failed to raise the issue in the trial court, defendant has forfeited the claim. (See *People v. Williams* (1997) 16 Cal.4th 153, 250.)

More importantly, we see no reason to consider a challenge to defendant's sentence because he agreed to accept it as part of a plea bargain. As the trial court pointed out, defendant was facing a potential sentence of 10 years. In addition, he had a second case in which his probation had been revoked. His plea resulted in an agreed upon sentence of 32 months and his probation was terminated. "Where defendants have pleaded guilty in return for a specified sentence, appellate courts are not inclined to find error even though the trial court acts in excess of jurisdiction in reaching that figure, as long as the court does not lack fundamental jurisdiction." (*People v. Nguyen* (1993) 13 Cal.App.4th 114, 122.) Having received the benefit of his bargain, defendant is estopped from challenging his sentence on appeal. (*People v. Couch* (1996) 48 Cal.App.4th 1053, 1056-1058.)

We have reviewed the record and are satisfied no other arguable issues exist. Defendant has received effective appellate review of the judgment entered in this case.

(*Smith v. Robbins* (2000) 528 U.S. 259, 277-279; *People v. Kelly* (2006) 40 Cal.4th 106, 123-124.)

DISPOSITION

The judgment is affirmed.

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SUZUKAWA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.